

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

REC'D IN
REGULATORY AUTH.

In re:)
Generic Docket To Establish UNE Prices)
for Line Sharing Per FCC 99-355, and)
Riser Cable and Terminating Wire as)
Ordered in TRA Docket 98-00123)

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Docket No. 00-00544

EXECUTIVE SECRETARY

**RESPONSE OF COVAD COMMUNICATIONS COMPANY,
BLUESTAR NETWORKS, INC., BROADSLATE NETWORKS
OF TENNESSEE, INC., AND VECTRIS TELECOM, INC. TO BELL SOUTH
TELECOMMUNICATIONS, INC.'S PROPOSED INTERIM RATES**

BlueStar Networks, Inc. ("BlueStar"), DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), Broadslate Networks of Tennessee, Inc., and Vectris Telecom, Inc. ("Vectris")¹ (collectively, the "DATA Coalition") file this response to BellSouth Telecommunications, Inc.'s ("BellSouth") Interim Rate Proposal.

Although BellSouth's Interim Rate Proposal moves in the right direction, BellSouth fails to recognize that fundamental flaws undermine its rate proposals, regardless of the state in which it files its proposals. Generally, BellSouth's proposed rates neither reflect forward looking, efficient network design nor accurate cost-based rates. Surprisingly, BellSouth also proposes rates for a number of elements that were not raised by the Data Coalition (or any other CLECs) and that are not specifically FCC *UNE Remand Order* issues.² All of BellSouth's interim proposals enable BellSouth alone to dictate greatly inflated rates (even in the interim), which if

¹ Vectris filed a Petition for Leave to Intervene on August 11, 2000. The Authority has not yet ruled on this petition.

² For example, BellSouth proposes an interim rate of \$113.85 for ADSL and HDSL loops. That rate is far better than current rates in Tennessee for those elements. To the extent that this proposal acknowledges previous flaws in the rates for those elements, the Data Coalition welcomes these revisions.

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accepted, would allow it to continue to stifle competition in Tennessee. The Data Coalition will discuss below each of BellSouth's interim proposals for xDSL elements.

BellSouth has not provided the Tennessee Regulatory Authority with any reason to reject the Data Coalition's proposed interim rates. BellSouth's cost studies simply present the highest rate it believes it can get away with charging data CLECs. In contrast, the Data Coalition has shown the Tennessee Regulatory Authority numerous instances in which other state commissions have appropriately set cost-based rates on elements similar to those sold by BellSouth. BellSouth fails to explain why its unbundled network elements range from 7 to 34 times the cost of similar UNEs sold by incumbent carriers in other regions.

I. BellSouth's Interim Rate Proposal

A. UCL Loop

BellSouth's proposed interim rate (\$270.01 nonrecurring) for a UCL short amply illustrates the inherent flaws in BellSouth's rate proposal. First, without any explanation, BellSouth suggests that a 2-wire copper loop should be priced at \$270.01 nonrecurring when that exact same element is sold for \$113.85 nonrecurring in Florida. *See* Exhibit 4 to Comments of the Data Coalition in Support of Setting Interim Rates ("Data Coalition Comments"). Nonetheless, BellSouth proposes to charge CLECs in Tennessee more than double what they are forced to pay in Florida for exactly the same element. Second, BellSouth fails to explain how the UCL loop differs from a simple copper voice grade loop. It is well settled that the 1996 Act entitles CLECs to buy a UNE offered by BellSouth and use it to provide whatever type of

telecommunication services the CLEC is able to provide on that facility.³ BellSouth cannot limit or dictate the types of services CLECs provide using UNEs they obtain from BellSouth.⁴

Data Coalition members simply need a voice grade loop to provide xDSL services. BellSouth's UCL offering is a designed loop, which allows BellSouth to charge higher rates for services that exceed data CLECs' needs. Therefore, the Data Coalition respectfully requests that the Authority set the interim rate for a UCL at the 2-wire analog voice grade loop level (SL1). Such an interim rate would clearly be consistent with the vast majority of the country, where rates are exponentially less expensive than those BellSouth proposes. *See* Data Coalition Comments at 5-6.⁵

B. Loop Conditioning

BellSouth's proposed interim loop conditioning rates are exorbitant considering that BellSouth performs this type of simple maintenance on its outside plant on a daily basis. BellSouth's loop conditioning charges should be rejected in their entirety because BellSouth's alleged underlying costs are inconsistent with efficient, modern network engineering practices, and BellSouth does not charge its retail customers for loop conditioning. Moreover, BellSouth is attempting to double recover these maintenance and grooming costs that already have been charged to ratepayers.

³ 47 U.S.C. § 251(d)(2); *In the Matter of Implementation of the Local competition Provisions of the 1996 Act*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking* ¶ 13 (rel. Nov. 5, 1999) ("UNE Remand Order").

⁴ *See id.* ¶ 191.

⁵ In an ongoing xDSL pricing docket in Alabama, BellSouth recently argued that comparison to other states was invalid in light of the Eighth Circuit's recent decision in the Iowa Utilities Board case. That is incorrect. Although the Eighth Circuit decision vacated one subpart of the FCC's overall pricing methodology, it affirmed the validity of forward looking, cost-based rates that exclude all historical or embedded costs. Thus, forward looking, cost-based rates established by other state commissions can and should guide the Authority in setting interim rates in Tennessee. The state commission decisions discussed in the Data Coalition Comments (and the rate charts) show by clear and convincing evidence that BellSouth's UNE pricing far exceeds pricing in other states and by other ILECs.

Loops less than 18,000 feet built in a forward looking network engineered to modern Carrier Serving Area standards, which BellSouth purports to follow, are not encumbered by load coils or excessive bridged tap. Because these loops should not require conditioning to support xDSL services, no charge for conditioning should be imposed on CLECs. Bell Atlantic, for example, recognizes this fact and does not charge CLECs for routine maintenance work to remove these devices on loops under 18,000 feet.

Furthermore, BellSouth cannot charge CLECs for loop conditioning on loops up to 18,000 feet because when it sells business stand-alone DSL loops that require conditioning, BellSouth does not charge its own retail customers for conditioning. In fact, information gathered in other cost dockets suggests that BellSouth does not assess its retail customers any charges for conditioning loops up to 18,000 feet. Thus, the loop conditioning cost for CLECs should likewise be zero on loops up to 18,000 feet.

For loops over 18,000 feet, BellSouth proposes charges that make conditioning that loop (and thus providing xDSL service over that loop) prohibitively expensive. The Data Coalition respectfully requests that the Authority set interim rates for conditioning at zero for loops up to 18,000, and for loops over 18,000 at rates as set forth in the Data Coalition Comments (*see* pp. 9-10).

C. Loop Make-Up Information

Even though BellSouth has been under the legal obligation to provide electronic access to loop make-up information since May 17, 2000, at the latest, BellSouth has failed to comply with those legal obligations. Instead, it offers only a cumbersome, expensive manual process to data CLECs who need such information. BellSouth proposes that the Authority allow it to continue to charge at least \$131.22 for this manual inquiry. With these inflated charges, BellSouth has no

incentive to comply with its legal obligations to provide electronic access to loop make-up information. Although BellSouth represents that electronic access to loop make-up is currently in beta testing, that beta testing actually will not begin until September 5, 2000. Even if the testing is successful, the Data Coalition will not have commercial use of this system for several months after the test's completion. Thus, CLECs must use a manual process for the foreseeable future while BellSouth continues to delay electronic availability to loop make-up information. Allowing BellSouth to charge inflated costs for manual loop make-up inquiries provides additional financial incentive for BellSouth to flout the law. The Public Utility Commission of Texas rejected this perverse incentive when it set the rate at zero for manual access to loop make-up information.⁶

The Data Coalition also urges the Authority ultimately to conclude that BellSouth cannot charge for either electronic or manual loop make-up inquiries because BellSouth does not appear to attribute any loop make-up costs to its own retail ADSL product. To remain consistent with the 1996 Act's and the Authority's nondiscrimination principles, the Authority should prohibit BellSouth from charging CLECs for accessing this same information. Nonetheless, as an interim measure, the Data Coalition is willing to accept the electronic loop make up proposal of \$0.6888 for both electronic and manual loop make up inquiries. This proposal places the proper incentives on BellSouth to develop and implement quickly electronic loop make-up access for all CLECs in Tennessee.

D. Line Sharing

Because of the complexity of analyzing various elements of line sharing, the Data Coalition was willing to accept the existing, negotiated interim rates for line sharing. These

⁶ See Exhibit 8 to Data Coalition Comments at 74-75 (Covad/Rhythms Arbitration Order).

rates, which members of the Data Coalition were forced to accept during negotiations, represented an average of the various pricing proposals made by BellSouth throughout the region. However, largely because of the Authority's continuing oversight of BellSouth's cost proposals, BellSouth has now proposed lower line sharing – per line activation recurring and nonrecurring costs in this docket than BellSouth proposed, for example, in North Carolina. Although these rates still are inflated by unnecessary costs and will be subject to extensive analysis by the Data Coalition as this docket progresses, they are better than earlier proposals. Therefore, the Data Coalition accepts BellSouth's proposal for interim rates for line sharing as set forth below, though we note that the highlighted nonrecurring charges are actually higher than the rates contained in BellSouth's interim line sharing agreements with Data Coalition members (*see* Exhibit 10 to Data Coalition Comments).

BellSouth Proposed Line Sharing Rates			
Element	Recurring	Nonrecurring (1 st)	Nonrecurring (Add'l)
Line Sharing Splitter, per System 96 Line Capacity	\$100.00	\$150.00	N/A
Line Sharing Splitter, per System 24 Line Capacity	\$25.00	\$150.00	N/A
Line Sharing Splitter, per Line Activation, Central Office	\$3.48	\$48.97	\$21.39
Line Sharing Splitter, per Subsequent Activity per Line Rearrangement	N/A	\$33.30	\$15.44

E. Riser Cable/Network Terminating Wire

The Data Coalition continues to request that the Authority establish the Kentucky rates for these elements as interim rates in this docket. BellSouth has proposed a confusing array of elements at highly inflated prices that do not reflect the actual costs of providing these elements. Therefore, BellSouth's rates should be rejected.

II. Other Issues Raised in BellSouth's Interim Rate Proposal

From the interim rate list filed by BellSouth, it appears that BellSouth is expanding this docket beyond what the Authority has ordered (specifically UCL loops, loop conditioning, loop

make up, line sharing, and FCC *UNE Remand Order* elements). For example, BellSouth has proposed a series of collocation prices, even though the Authority already adopted the AT&T/MCI cost study for collocation in the ongoing Tennessee generic cost docket. Additionally, BellSouth has proposed rates for items such as “loop testing,” which the Data Coalition urges the Authority to reject. BellSouth has not explained what loop testing is, why it is required, when it is necessary, or what BellSouth purports to recover through this charge. Because loop testing is neither required by the *UNE Remand Order* nor a result of Covad’s and BlueStar’s request to expand this docket, this service should not be included in this docket. Additionally, BellSouth proposes rates for Daily Usage File and other elements. These elements also do not belong in this docket. The Data Coalition merely wants to bring these issues to the Authority’s attention so that the docket does not expand beyond the scope ordered.

III. Sprint’s Proposal

In the Data Coalition Comments, the Data Coalition did not focus on Sprint’s proposed rates other than to comment in passing that they too are unacceptable. The Data Coalition intends to subject Sprint’s proposals to extensive scrutiny as this docket proceeds. Nonetheless, the Data Coalition notes that Sprint’s proposal for loop conditioning on loops greater than 18,000 feet in length suffers from many of the same shortcomings as BellSouth’s proposal. In particular, Sprint, like BellSouth, proposes conditioning such loops one loop at a time rather than a full binder group at a time, unnecessarily raising costs. *See* Data Coalition Comments at 8-9 and Exhibit 2 at 134-47. If the Authority adopts the Data Coalition’s interim rate proposal for loop conditioning for loops greater than 18,000 feet in length, the Data Coalition encourages the Authority to impose these interim rates on Sprint as well.

IV. Conclusion

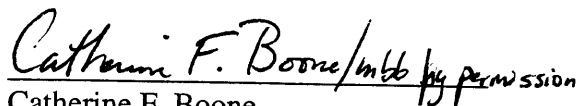
With the exception of BellSouth's proposed line sharing rates, the Authority should reject BellSouth's proposed interim rates. BellSouth seeks to inflate CLECs' costs in Tennessee and relies solely on its cost studies, which until thoroughly examined simply represent BellSouth's subjective view about what its costs are and what CLECs should pay. In contrast, the Data Coalition has shown the Authority numerous instances of other state commissions' objective analyses and conclusions about reasonable forward looking cost-based pricing of elements necessary for xDSL services. Therefore, the Authority should adopt the Data Coalition's proposed interim rates, subject to true up when the Authority adopts permanent prices for these elements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid to the following on this 25th day of August, 2000.

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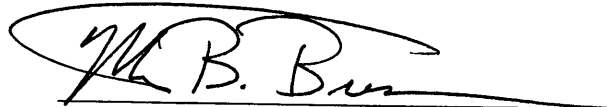
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A handwritten signature in black ink, appearing to read "M. B. Bressman", with a long horizontal flourish extending to the right.

Michael B. Bressman

* By Facsimile